

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:10-CR-71-D
No. 7:13-CV-123-D

CIPRIANO DIAZ-GALIANA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

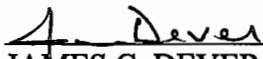
ORDER

On October 22, 2013 the court dismissed Cipriano Diaz-Galiana's ("Diaz-Galiana") first section 2255 motion [D.E. 84]. On May 2, 2013, the United States Court of Appeals for the Fourth Circuit denied a certificate of appealability and dismissed the appeal. See United States v. Diaz-Galiana, 570 F. App'x 320 (4th Cir. 2014) (per curiam) (unpublished). On May 30, 2017, Diaz-Galiana filed a second section 2255 motion [D.E. 93]. On September 11, 2017, Diaz-Galiana filed a motion concerning the status of his second section 2255 motion [D.E. 97]. On November 13, 2017, the government moved to dismiss Diaz-Galiana's second section 2255 motion [D.E. 99] and filed a memorandum in support [D.E. 100].

Diaz-Galiana's second section 2255 motion [D.E. 93] is DISMISSED for lack of subject-matter jurisdiction as successive. See, e.g., 28 U.S.C. § 2255(h); Burton v. Stewart, 549 U.S. 147, 152–53 (2007) (per curiam); In re Williams, 364 F.3d 235, 238 (4th Cir. 2004); United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003). Diaz-Galiana's other motion [D.E. 97] is also DISMISSED. The court DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In sum, the court GRANTS the government's motion to dismiss [D.E. 99], DISMISSES Diaz-Galiana's section 2255 motion [D.E. 93], and DISMISSES Diaz-Galiana's motion concerning status [D.E. 97].

SO ORDERED. This 11 day of June 2018.



JAMES C. DEVER III
Chief United States District Judge